IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4073 of 2007(M)

CRIME NOT KNOWN OF PAYYANUR POLICE STATION

: PETITIONER

MANOJ.M.,S/O.KUNHIRAMAN P,
CHEPPANOOL,MUYYAM PO,KANNUR.

BY ADV. SRI.C.V.MANUVILSAN
SRI.P.C.ANIL KUMAR

RESPONDENTS:

STATE OF KERALA REPS.BY THE SI OF
POLICE,PAYYANUR POLICE STATION.
THROUGH PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4073 of 2007

Dated this the 6th day of July, 2007

ORDER

Application for anticipatory bail. Petitioner is the 6th accused in a crime registered at the Payyannoor Police Station as Crime No.244 of 2007 under Section 399 I.P.C and Section 27 of the Arms Act. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The crux of the allegations in the said crime is that the police party found accused persons in a car unable to explain their presence armed with dangerous weapons. When the vehicle was stopped, three accused were arrested. It is alleged that some others had run away from the vehicle before they could be apprehended by the police. Interrogation of the petitioners led the police to the inference that the persons were conspiring to commit offences. They had criminal antecedents also. In these circumstances, the F.I.R was registered under Section 399 I.P.C and Section 27 of the Arms Act. Though in the F.I.R it was stated that 5 persons were there in the vehicle and two had run away, investigation revealed that there was one more person available in the vehicle. In fact, the learned Public Prosecutor points out that even in the F.I.R it appears that there is some confusion as to whether three persons run away or two persons.

Be that as it may, investigation conducted by the police including the interrogation of the apprehended accused persuaded the police to come to the conclusion that altogether there were 6 accused persons who had run away. The petitioner has been arrayed as the 6th accused person in the crime. Investigation is in progress. The police do want to arrest the petitioner.

3. The learned counsel for the petitioner submits that the F.I.R as it now is only shows that 5 persons were there. Three were apprehended and 2 had run away. The introduction of the 6th person - the petitioner as an accused is totally unjustified, he contends.

4. The learned Public Prosecutor opposes the application. He submits that there are very satisfactory indications to suggest that there was a 6th person also in the car though his presence and running away were not specifically perceived by the police officials who intercepted the vehicle and apprehended the accused persons. The learned Public Prosecutor submits that the indications reveal that a mobile phone belonging to the petitioner was also available in the vehicle. The petitioner, of course, contends that no mobile phone of his was and could be present in the vehicle.

5. The learned counsel for the petitioner asserts, and the learned Public Prosecutor makes no assertion contra, that the petitioner is not involved in any other crime.

6. I have considered all the relevant inputs. I am not at all persuaded to agree that this is a fit case where directions under Section 438 Cr.P.C can or ought to be issued in favour of the petitioner. There is no allegation of mala fides raised at all. The mere fact that the petitioner was not named in the F.I.R or the running away of the 6th person was not specifically mentioned in the F.I.R or even the fact that the petitioner has no antecedents of criminality is not sufficient, at any rate, to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case, where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail in the regular and ordinary course.

7. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-